Tan Weng Chiang v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO 48 OF 1987
MOHAMED AZMI, PEH SWEE CHIN AND EDGAR JOSEPH JR SCJJ
15 OCTOBER 1992

Criminal Procedure *— Trial — Joint trial — Discretion of court to order joint trial — When discretion removed — Whether joint trial a nullity — Essential (Security Cases) Regulations 1975 reg 10(2) — Criminal Procedure Code (FMS Cap 6) s 170*

Statutory Interpretation *— Golden rule — Words in statutes given plain and ordinary meaning — Judges not to invent ambiguities where words plain and unambiguous*

At a joint trial of the appellant and one Lim, the appellant was charged and convicted of being in possession of a pistol and ammunition in a security area without lawful authority under s 57(1)(a) and (b) of the Internal Security Act 1960 and he was sentenced to death. Lim was charged for consorting with the appellant but he was acquitted at the end of the prosecution case. The appellant appealed. On appeal it was argued that the joint trial before the learned judge was a nullity as no application had been made by the prosecution for the joint trial. It was also contended that without a certificate of the public prosecutor issued under reg 10(2) of the Essential (Security Cases) Regulations 1975, the trial court had no jurisdiction to order a joint trial.

Held, dismissing the appeal:

(1) The court was satisfied from the record and supplementary record of appeal that an application had been made by a deputy public prosecutor for a joint trial of both the accused persons and this was allowed. There was no reason why the two accused should not be tried jointly under s 170 of the Criminal Procedure Code (FMS Cap 6) ('CPC').

(2) Applying the golden rule of construction as to the plain and ordinary meaning of the words used by the legislature in reg 10(2) of the Essential (Security Cases) Regulations 1975, it is clear that the word 'and' must be read disjunctively. The signification of the words 'Any number of accused persons may be tried together' in the first limb of reg 10(2) is a discretion given to the court to exercise the power given under s 170 of the CPC for a joint trial, but the second limb of the regulation takes away the court's power to refuse an application for a joint trial under the CPC where the public prosecutor gives a certificate in which case the court is obliged to hold a joint trial of the several accused persons notwithstanding that the case might not fall under s 170 of the CPC. Full effect must be given to the words in the first limb of the regulation. Where the meaning of words in a statute is plain and unambiguous, judges should not invent fancy ambiguities.

(3) The modification intended by reg 10(2) of the Essential (Security Cases) Regulations 1975 is only applicable to cases where there is a certificate for a joint trial issued by the public prosecutor in which event the court has no discretion but to grant the order for a joint trial notwithstanding that the case is not covered by s 170 of the CPC. The modification is only intended to ensure that the application for a joint trial by the prosecution will under no circumstances be refused on whatever grounds once the certificate is produced. However, where there is no certificate, the power and jurisdiction of the court under s 170 of the CPC to allow or refuse such an order, remain intact in the absence of express and unambiguous words to the contrary.

(4) The appellant failed to show that the joint trial in this case had occasioned substantial miscarriage of justice as envisaged by the proviso to s 60 of the Courts of Judicature Act 1960.

[Bahasa Malaysia summary

Dalam suatu perbicaraan bersama perayu dan satu yang lain bernama Lim, perayu telah dituduh dan disabitkan bersalah kerana memiliki suatu pistol dan amunisi dalam kawasan keselamatan tanpa kuasa yang sah di bawah s 57(1)(a) dan (b) Akta Keselamatan Dalam Negeri 1960 dan telah dihukum mati. Lim telah dituduh bergaul (consorting) dengannya tetapi telah dibebaskan bila kes bagi pihak pendakwa ditutup. Perayu telah membuat rayuan. Di dalam rayuan itu telah dihujahkan bahawa perbicaraan bersama di hadapan hakim yang arif adalah terbatal oleh kerana tidak ada permohonan yang dibuat oleh pihak pendakwa untuk perbicaraan bersama. Dihujahkan juga bahawa tanpa perakuan pendakwa raya yang dikeluarkan di bawah peraturan 10(2) Peraturan-Peraturan Perlu (Kes-Kes Keselamatan) 1975, mahkamah perbicaraan itu tidak mempunyai bidang kuasa memerintahkan perbicaraan bersama.

Diputuskan, menolak rayuan itu:

(1) Mahkamah berpuas hati daripada rekod dan rekod tambahan rayuan itu bahawa suatu permohonan telah dibuat oleh seorang timbalan pendakwa raya untuk perbicaraan bersama kedua-dua orang yang dituduh dan ini telah dibenarkan. Tidak ada sebab mengapa kedua-dua orang yang dituduh itu tidak boleh dibicarakan bersama di bawah s 170 Kanun Acara Jenayah (FMS Bab 6) ('Kanun itu').

(2) Dengan memakai kaedah keemasan pentafsiran berkenaan dengan makna jelas dan biasa bagi perkataan-perkataan yang digunakan oleh badan perundangan di dalam peraturan 10(2) Peraturan-Peraturan Perlu (Kes-Kes Keselamatan) 1975, jelaslah perkataan 'and' di dalamnya hendaklah dibaca secara disjunktif. Pemaknaan perkataan-perkataan 'Any number of accused persons may be tried together' dalam bahagian pertama peraturan 10(2) adalah pemberian budi bicara kepada mahkamah untuk menggunakan

kuasa yang diberi di bawah s 170 Kanun itu untuk perbicaraan bersama tetapi bahagian kedua peraturan itu merampas kuasa mahkamah untuk menolak suatu permohonan untuk perbicaraan bersama di bawah Kanun itu di mana pihak pendakwa memberi suatu perakuan yang jika terjadi mahkamah terpaksa mengadakan suatu perbicaraan bersama orang yang dituduh walaupun kes itu mungkin tidak terjatuh di bawah s 170 Kanun itu. Kesan sepenuhnya mesti diberi kepada perkataan-perkataan dalam bahagian pertama peraturan itu. Di mana makna perkataan-perkataan di dalam sesuatu statut adalah nyata dan jelas, hakim-hakim sebaiknya tidak patut mencipta kekaburan makna yang berdasarkan imaginasi.

(3) Ubah suaian yang dimaksudkan oleh peraturan 10(2) Peraturan-Peraturan Perlu (Kes-Kes Keselamatan) 1975 itu hanya terpakai pada kes-kes di mana terdapat perakuan bagi perbicaraan bersama yang dikeluarkan oleh pendakwa raya yang jika berlaku mahkamah tidak mempunyai budi bicara melainkan memberi perintah untuk perbicaraan bersama walaupun kes itu tidak termasuk di bawah s 170 Kanun itu. Ubah suaian itu hanya dimaksudkan untuk memastikan bahawa permohonan untuk perbicaraan bersama oleh pihak pendakwa jangan sekali-kali ditolak atas alasan apa pun sebaik sahaja perakuan itu dikemukakan. Akan tetapi, jika tidak terdapat perakuan itu, kuasa dan bidang kuasa mahkamah di bawah s 170 Kanun itu untuk membenarkan atau menolak perintah seperti itu, tetap tidak terjejas dengan tidak adanya perkataan-perkataan yang nyata dan jelas sebaliknya.

(4) Perayu telah gagal menunjukkan bahawa perbicaraan bersama di dalam kes ini menyebabkan salah laksana keadilan substansial seperti yang dibayangkan oleh proviso kepada s 60 Akta Mahkamah Kehakiman 1964.]

Notes

For cases relating to joint trial, see 5 *Mallal's Digest* (4th Ed) paras 2651–2682.

Cases referred to

1 *Subrahmania Ayyar v King-Emperor* 28 IA 257 (folld)
2 *Chin Choy v PP* [1955] MLJ 236 (folld)
3 *Jayaraman & Ors v PP* [1979] 2 MLJ 88 (folld)
4 *Manson v Duke of Westminster & Ors* [1981] 2 All ER 40 (refd)
5 *River Wear Commissioners v Adamson & Ors* [1874–80] All ER Rep 1 (refd)
6 *Duport Steels Ltd & Ors v Sirs & Ors* [1980] 1 All ER 529 (folld)
7 *Affin Credit (Malaysia) Sdn Bhd v Yap Yuen Fui* [1984] 1 MLJ 169 (refd)
8 *Magor and St Mellons Rural District Council v Newport Corporation* [1952] AC 189 (refd)
9 *Lim Sing Hiaw v PP* [1965] 1 MLJ 85 (folld)

Legislation referred to
Criminal Procedure Code (FMS Cap 6) s 170
Essential (Security Cases) Regulations 1975 regs 3(1), 10(2)

Appeal from: Criminal Trial No 15 of 1984 (High Court, Kota Bharu)

Karpal Singh (*Karpal Singh & Co*) for the appellant.
Jalaldin bin Hussain (Deputy Public Prosecutor) for the respondent.

Mohamed Azmi SCJ (delivering the grounds of judgment of the court): At a joint trial of the appellant and one Lim Ah Wang, the appellant was convicted by Abdul Malek J on two counts under s 57(1) of the Internal Security Act 1960 (Rev 1972) ('the Act') in the Kota Bharu High Court and sentenced to death. On the first charge he was found guilty of being in possession without lawful authority, of a .22 pistol No 94776 in a security area at a police road block along the Rantau Panjang-Pasir Mas Highway on 22 September 1984 at about 12.30pm, an offence punishable under s 57(1)(a). On the second charge, he was found guilty under s 57(1)(b) of being in possession of 33 rounds of .22 ammunition without lawful authority at the same time and place. The pistol was found tucked in the front part of his trousers loaded with nine rounds of ammunition. Another 24 rounds of ammunition were found in a polythene bag in his right hand trousers' pocket. However, Lim Ah Wang who was charged under s 58(2) for consorting with the appellant in the circumstances which raised a reasonable presumption that he knew that the appellant was in unlawful possession of the firearm and ammunition, was found not guilty and acquitted at the close of the prosecution case without his defence being called, there being hardly any evidence against him apart from the mere fact that he was found travelling in the same taxi as the appellant together with three other passengers.

There was ample evidence to prove that at the time of the commission of the two offences, the appellant was travelling in a motor taxi driven by Che Daud bin Yusuf (PW5) from the direction of the border town of Rantau Panjang towards Pasir Mas. He was seated in front, next to the driver. There were four other passengers in the rear seat, including Lim Ah Wang. The discovery of the firearm and ammunition on the person of the appellant was proved by the testimony of police witnesses and sufficiently corroborated by the evidence of the taxi driver, an independent witness. In his defence, the appellant contended that he was framed by the police and he denied possession of the firearm and the ammunition. On the evidence before him, the learned judge came to the conclusion that the defence had not raised a reasonable doubt in the prosecution case and found him guilty on both the charges.

Before us, since the appellant was practically caught red-handed with the firearm and ammunition, the only point raised by Mr Karpal Singh on behalf of the appellant was that the trial before the learned judge was a nullity, as no application was made by the prosecution for a joint trial of

both the appellant (in Criminal Trial No 14 of 1984) and Lim Ah Wang (in Criminal Trial No 15 of 1984). It was contended that the learned trial judge was wrong in law in not exercising his discretionary power in accordance with s 170 of the Criminal Procedure Code (FMS Cap 6) ('CPC') for the purpose of determining whether the charges against the appellant and Lim Ah Wang ought to be tried jointly or separately. Mr Karpal Singh argued that it was a prerequisite for the court to decide whether or not a joint trial ought to be ordered at the commencement of the trial. Secondly, it was contended that without a certificate of the public prosecutor issued under reg 10(2) of the Essential (Security Cases) Regulations 1975, the trial court had no jurisdiction to order a joint trial.

On the first issued raised, we were satisfied from the record and supplementary record of appeal that when the appellant and Lim appeared before the High Court with counsel on 23 March 1986, an application was indeed made by DPP Mohd Azman bin Husin for a joint trial of both the accused persons. The application was allowed and there was nothing in the appeal record to indicate that any objection to the joint trial had been raised by the defence either on that day or on any subsequent day of the trial. Since Lim Ah Wang was charged with the offence of consorting with the appellant under s 58(2) of the Act with regard to unlawful possession of firearm and ammunition committed in the same transaction, we found no reason why the two accused should not be tried jointly under s 170 of the CPC. Although s 163 of the CPC provides that each accused person should be charged and tried separately, and a contravention of this rule, according to the Privy Council in *Subrahmania Ayyar v King-Emperor*[1] and followed by *Chin Choy v PP*[2] and *Jayaraman & Ors v PP*,[3] is an illegality which cannot be cured, the section itself sets out four exceptions to the rule as provided in ss 164, 165, 166 and 170. In the circumstances, we were satisfied that there was no merit in the argument that there was no application made by the prosecution for a joint trial. Since Lim Ah Wang was charged with the offence of consorting with the appellant, the fact that the original charge against the appellant was rectified by amendment from 'February' to 'September' 1984 (due no doubt to typographical error) after two prosecution witnesses had given evidence, did not detract from the undisputed fact that the offences allegedly committed by both accused had taken place in the same transaction on 22 September 1984. The error in the original charge was quite obvious because even the certificate issued by the public prosecutor under reg 6(1) for committal of the appellant in the High Court referred to offences committed on 22 September 1984.

On the second argument, reg 3(1) of the Essential (Security Cases) Regulations 1975 provides:

> These Regulations shall have effect with respect to security cases notwithstanding anything to the contrary contained in any written law; but, except in so far as the same are varied by these Regulations, the ordinary practice and procedure, where appropriate, shall apply to security cases.

Mr Karpal Singh sought to show that s 170 of the CPC had been varied and excluded by reg 10(2) which states:

> Any number of accused persons may be tried together, and they shall be tried together where the Public Prosecutor gives a certificate that it is a fit case for a joint trial.

In *Manson v Duke of Westminster & Ors*,[4] Stephenson LJ reproduced at p 48 Lord Wensleydale's golden rule of interpretation of statute cited by Lord Blackburn in *River Wear Commissioners v Adamson*[5] at p 12:

> ... that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification, which, though less proper, is one which the court thinks the words will bear.

Applying the golden rule of construction as to the plain and ordinary meaning of the words used by the legislature in reg 10(2), it is clear that the word 'and' is intended to be read disjunctively. The signification of the words 'Any number of accused persons may be tried together' in the first limb of reg 10(2) is a discretion given to the court to exercise the power given under s 170 of the CPC for a joint trial, but the second limb of the regulation takes away the court's power to refuse an application for a joint trial under the CPC where the public prosecutor gives a certificate in which case the court is obliged to hold a joint trial of the several accused persons notwithstanding that the case might not fall under s 170 of the CPC. In our view, full effect must be given to the words in the first limb of the regulation. We cannot accept that the intention of the legislature is to displace completely the provision of s 170 of the CPC in all cases unless we are prepared to do violence to the legislative words or to ignore these words altogether so as to produce the interpretation canvassed by the learned defence counsel. Where the meaning of words in the statute is plain and unambiguous, judges should not invent fancy ambiguities. This principle, though enunciated by Lord Diplock in *Duport Steels Ltd & Ors v Sirs & Ors*[6] at p 541 in legislation involving industrial relation, is in our view equally appropriate, subject to the golden rule, in legislation made under emergency power to curtail or modify existing legislation on the power and jurisdiction of the court in criminal law and procedure. Clear and unambiguous words must exist in such modification or exclusion of the existing powers and jurisdiction of the court. In interpreting reg 10(2), the duty of the court is therefore limited to interpreting the words used by the legislature. The same principle was adopted by the Federal Court in *Affin Credit (Malaysia) Sdn Bhd v Yap Yuen Fui*[7] at p 171 quoting with approval *Magor and St Mellons Rural District Council v Newport Corporation*[8] at p 191.

In the present case, not only is there an absence of expressed words in reg 10(2) to exclude wholly the provision of s 170 of the CPC, but words do exist to signify the intention of the legislature to preserve the discretionary power of the court to allow an application for a joint trial even where there is no certificate for a joint trial issued by the public prosecutor. In our opinion, the modification intended by reg 10(2) is only applicable to cases where there is such a certificate by the public prosecutor in which event the court has no discretion but to grant the order for a joint trial notwithstand-

A ing that the case is not covered by s 170 of the CPC. The modification is only intended to ensure that the application for a joint trial by the prosecution will under no circumstances be refused on whatever grounds once the certificate is produced. However, where there is no certificate, the power and jurisdiction of the court under s 170 of the CPC to allow or refuse such an order, remain intact in the absence of expressed and unambiguous words to the contrary.

In the appeal before us there was admittedly no certificate issued by the public prosecutor under reg 10(2). The absence of such certificate did not deprive the trial judge of the discretionary power and jurisdiction to order a joint trial conferred by s 170 of the CPC. In the circumstances we were not persuaded that the joint trial in this case was a nullity. We had also examined the propriety of the discretion which had been exercised by the learned judge. Following the principle enunciated by the Federal Court in *Lim Sing Hiaw v PP*,[9] we found that learned counsel for the appellant had failed to show us and nor were we able to discover ourselves in what way the joint trial in this particular case had occasioned substantial miscarriage of justice as envisaged by the proviso to s 60 of the Courts of Judicature Act 1964.

The appeal was accordingly dismissed. The conviction on both the charges was upheld and the mandatory death sentence was affirmed.

Appeal dismissed.

Reported by Prof Ahmad Ibrahim